



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 27, 2003

Mr. Darrell G-M Noga
Roberts & Smaby P.C.
1717 Main Street, Suite 3000
Dallas, Texas 75201

OR2003-1254

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177473.

The City of Coppel (the "city"), which you represent, received a request for copies of police reports in regard to a specified incident and information pertaining to a charge in connection with Offense No. P2040760. You state that some responsive information has been or will be released to the requestor. You claim, however, that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹ Section 58.007 provides that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. *See* Fam. Code § 58.007. Section 58.007 states in pertinent part:

¹ Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). After carefully reviewing your arguments and the submitted information, we find that no portion of this information concerns juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Therefore, we cannot find that this information concerns juvenile conduct that is encompassed by section 58.007. Accordingly, we conclude that the city may not withhold any portion of the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

We note, however, that submitted information pertaining to case number P2039213 is subject to section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The submitted information pertaining to case number P2039213 concerns a report and investigation of alleged or suspected abuse under chapter 261. Assuming that the city's police department has not adopted a rule that governs the release

of this type of information, we conclude that the city must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. See Open Records Decision No. 440 at 2 (1986) (applying predecessor statute).²

You claim that the remaining submitted information pertaining to case number P2040760 is excepted from disclosure pursuant to subsections 552.108(a)(1) and (a)(2) of the Government Code. Section 552.108 provides in relevant part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (a)(2). We note that the protections offered by subsections 552.108(a)(1) and (a)(2) are, generally speaking, mutually exclusive. Section 552.108(a)(1) generally applies to information held by law-enforcement agencies that pertains to pending criminal investigations or prosecutions. Section 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in a final result other than a criminal conviction or deferred adjudication. Based on our review of your representation that the prosecution associated with this case is pending, we find that you have met your burden of demonstrating the applicability of section 552.108(a)(1) in this instance and agree that this subsection is applicable to this information. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

² We note, however, that if the investigation which is associated with this report has been referred to the Department of Protective and Regulatory Services (the "department"), a parent who is a requestor may be entitled to access to the department's records. Section 261.201(g) of the Family Code provides that the department, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released to the requestor, we conclude that the city may withhold the marked information pertaining to case number P2040760 pursuant to section 552.108(a)(1) of the Government Code. Because we base our ruling on sections 552.101 and 552.108 of the Government Code, we need not address your remaining claimed exceptions to disclosure.

In summary, the city must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information that must be released to the requestor, the city may withhold the remaining submitted information pursuant to section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

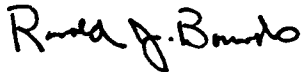
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 177473

Enc. Marked documents

c: Ms. G. Alvarez
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Irving, Texas 75063
(w/o enclosures)